

FILED/ACCEPTED

DEC 19 2007

Federal Communications Commission
Office of the Secretary

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

CLOSED CAPTIONING et al.)
)
Petition for Exemption and/or Waiver of)
St. Luke's United Methodist Church of Houston)

To: Secretary

PETITION FOR EXEMPTION AND/OR WAIVER

Robert Lewis Thompson
SMITHWICK & BELENDIUK-PC
5028 Wisconsin Ave., NW #301
Washington, DC 20016
(202) 363-4409
bthompson@fccworld.com

December 19, 2007

PETITION FOR EXEMPTION AND/OR WAIVER

St. Luke's United Methodist Church, of Houston, Texas ("SLMC"), respectfully submits this **Petition for Exemption and/or Waiver** from the FCC's closed captioning rules, 47 CFR 79.1 et seq., for its weekly Sunday Worship Service, to be broadcast on a tape-delayed basis on both KNWS -TV, Katy, TX, and on KTBU (TV), Conroe, TX ("Sunday Service"). The Petition should be granted, not only pursuant to 47 CFR 79.1(d)(5) and (d)(8), but also because compliance with these rules would inflict an "undue burden" on SLMC, contrary to 47 CFR 79.1(f)(1) and the public interest.

The FCC's rules expressly recognize that an exemption (or waiver) from the FCC's closed captioning requirements is appropriate in several instances. Specifically, the rules exempt any programming that is distributed "to residential households between 2 a.m. and 6 a.m. local time." See 47 CFR 79.1(d)(5). The Petitioner proposes to commence broadcasting (by tape delay) of its Sunday Service on Houston-area station KTBU (TV), channel 55, exclusively during the hours of 2 a.m. and 6 a.m. local (Houston) time. See Appendix A. The programming transmissions by KTBU (TV) will not be received in any time zone other than the Houston (Central) time zone. Id. Accordingly, SLMC is entitled to an exemption for its proposed programming on KTBU (TV), pursuant to 47 CFR 79.1(d)(5).

The Petitioner also is entitled to an exemption (or waiver) from the FCC's closed captioning rules because its programming (a) will be LOCALLY PRODUCED by SLMC in Houston, (b) will be LOCALLY DISTRIBUTED by SLMC to Houston-DMA television stations, (c) is not "news programming" and (d) has no "repeat value." Id.

Unlike other “local religious programs” that the FCC occasionally has found not to qualify for an exemption, SLMC's programming is precisely the type of locally produced, non-news programming that qualifies for an exemption. See, e.g., Petition for Exemption, filed by the Television Center of the Archdiocese of Miami, December 29, 2005 (“Archdiocese of Miami Petition”). SLMC's half-hour Sunday Service will be taped and aired within 18 hours on KTBU (TV) and only days later on KNWS-TV (SLMC's goal is to broadcast topical sermons and specific scriptural readings and, thus, the programming must be aired within a few days of taping).¹ In fact, the threshold problem for SLMC, is that the closed captioning process itself would take more than a week (see Appendix A) and most often would rob the Sunday Service of its topicality, contrary to SLMC purposes. In such circumstances, a “electronic newsroom” technique of captioning is not available or appropriate and, thus, SLMC is entitled to an exemption (or waiver) from the FCC's closed captioning rules pursuant to 47 CFR 79.1(d)(8).

Alternatively, the FCC's Rules also provide for an exemption from the agency's closed captioning rules for any programming for which adherence to those rules would place an “undue burden” on the program producer. See 47 CFR 79.1(f). Indeed, the FCC rules provide specific procedures for program producers to petition the FCC for exemptions based on the “undue burden” standard. Id.

In this case, SLMC not only qualifies for an exemption under Sections 79.1(d) (5) [for KTBU purposes] and 79.1(d)(8) of the FCC's rules, but also fully meets the FCC requirements for an exemption based on the “undue burden” test because the imposition of the closed captioning requirement with regard to the Sunday Service would present

¹ “Live” broadcasts are infinitely more expensive than taped broadcasts. See Archdiocese of Miami Petition, supra.

burdensome difficulties and crippling expenses for SLMC. First, SLMC reasonably estimates that the cost of closed captioning for each Sunday Service would total at least \$500 per week, or about \$26,000 in 2008. See Appendix A. That sum would represent more than 33% of SLMC's projected total 2008 budget for all of its video services, including the Sunday Service broadcast effort. Id. (SLMC provides other video services, including the occasional videotaping of funerals and the production of videos for local non-profit groups.) Id.)

Second, an additional \$26,000 closed captioning expense for SLMC's outreach efforts in 2008 would be crippling to SLMC and likely would force SLMC to cancel entirely the broadcast of the Sunday Service on the two Houston television stations. Id.

Third, funds are not available to be "shifted" from other SLMC outreach programs, or even from its general revenues, to enable closed captioning of the Sunday Service. Since Hurricane Rita hit the Houston area two years ago, SLMC's membership is down and its annual revenues are NOT growing. Id. This has left all of SLMC's substantial community outreach programs with "lean" budgets from which no further cuts can be made, in order to "shift funds" for the closed captioning of the Sunday Service. Id. SLMC's other community outreach programs include (a) a celebrated "Day School" at the Church, an "After School Child Care Program" and (c) the provision of its facilities to a local High School, scout groups, senior services, children's drama groups, and a private school. Id. Indeed, last year, more than 130 local community and support groups were given free use of SLMC's facilities and some financial aid was given to nearly 50 nonprofit groups as part of SLMC's local outreach efforts. Id.

Fourth, SLMC is a self-sustaining Church and cannot look to an Archdiocese-type parent or to a national Methodist organization for additional funding for closed captioning of its Sunday Service. *Id.* Indeed, it is also relevant that, unlike for-profit programming providers, SLMC is a non-profit, charitable and educational entity that owns no subsidiaries that generate revenues to finance its community outreach programs, including the Sunday Service. *Id.*

Fifth, reasonable alternatives have been considered but none is financially viable. For example, to broadcast the Sunday Service in sign language would require not only a second camera but also additional insertion equipment and the hiring of a technical employee to produce the sign language insertions in the programming. SLMC has access to no (zero) equipment for closed captioning and no other capacity to create closed captioning “in house.” *Id.*

Sixth, a balance of public interest factors also strongly weighs in favor of the FCC’s grant of an exemption to SLMC under the “undue burden” test. Without an exemption, the broadcast of the Sunday Service likely would be cancelled, so that tens of thousands of homebound, elderly and disabled viewers in Greater Houston would be denied weekly access to their Church, to their Methodist religion, to their religious traditions and, effectively, would be denied the opportunity to practice their chosen religion via television.² *Id.* These disenfranchised viewers would include large numbers of disabled, sick and frail elderly residents in the Houston DMA who cannot otherwise attend any weekly religious services and who will be dependent upon this televised

² Indeed, the FCC’s failure to grant an exemption to SLMC under the facts of this particular case arguably would constitute unconstitutional governmental involvement in religious matters.

Sunday Service from SLMC to satisfy their spiritual needs. Id.³ In addition, SLMC is a multi-racial Church, whose outreach to the diverse Houston community is reflected, among other ways, through the leadership of one of its pastors, the Reverend Justin Coleman, a distinguished African-American.

Apart from the exemption provisions of Sections 79.1(f) of the Rules, SLMC alternatively seeks a waiver of the FCC's closed captioning rules, 47 CFR 79.1 et seq., on the basis that the FCC has held in analogous circumstances that non-profit entities are entitled to waivers of certain FCC regulations, especially those rules and regulations that impose financial obligations upon non-governmental entities. For example, non-profit organizations generally are exempt from the FCC's rules and policies involving the payment of annual regulatory/filing fees. A denial of SLMC's request for an exemption/waiver of the FCC's closed captioning rules, in these circumstances, would be an arbitrary and capricious departure from FCC precedent and policy. See generally, Triennial Report to Congress, Identifying and Eliminating Market Entry Barriers for Entrepreneurs and OTHER SMALL BUSINESSES, FCC 07-181, released December 6, 2007.

Finally, SLMC alternatively seeks a waiver of the FCC's closed captioning rules on the basis of the Church's status as a wholly eleemosynary institution that, among its services, produces religious TV services for prompt re-broadcast locally. Any Church should be relied upon, without unreasonable government interference, to balance the many financial needs of serving its community, especially the poor and numerous immigrants from Latin America who have moved to Houston (needs such as housing, day

³ Homebound viewers will be invited at the end of each televised Sunday Service to request information to assist their needs -- made possible ONLY through SLMC's Sunday Service.

schools, senior centers, legal assistance, food banks and even burial services). SLMC respectfully submits that forcing this Houston religious organization to curtail its provision of other social and charitable programs that serve the public interest -- in order to further the FCC's closed captioning rules -- would be an unjust, illegal and unconstitutional intrusion into the Church's discretion to allocate its resources in the manner that, in its reasonable and humane judgment, best serves the public in Greater Houston.⁴

CONCLUSION

For the foregoing reasons, an exemption from the FCC's closed captioning rules for this one weekly program – SLMC's Sunday Service -- is not only warranted but, clearly, such an exemption would best serve the public interest. Cf. Television Center of the Archdiocese of Miami , supra (exemption granted as in the public interest).

Respectfully submitted,



ROBERT LEWIS THOMPSON
Smithwick & Belendiuk, PC
5028 Wisconsin Ave., NW
Suite 301
Washington, DC 20016
(202) 363-4409
bthompson@fccworld.com

Counsel for SLMC

December 19, 2007

⁴ Not only has neither SLMC never received a single complaint from any of the five million Houston residents regarding the failure of its current Sunday Service to be closed captioned, SLMC has received many letters of unrestrained praise of its numerous, irreplaceable charitable programs.

Appendix A

Sworn Statement

My name is April Canik and I am Communications Director for St. Luke's United Methodist Church of Houston ("SLMC"). I have read SLMC's foregoing Petition for Exemption and/or Waiver of the FCC's closed captioning rules and I hereby affirm under penalty of perjury that it is true and correct, to the best of my information and belief. Specifically, each of the factual statements contained in the Petition, regarding SLMC, its Sunday Service programming, its community outreach, and its planned Sunday Service broadcasts on stations KNWS-TV and KTBU (TV), is true and correct.

Executed on December 18, 2007.

A handwritten signature in cursive script that reads "April Canik". The signature is written in dark ink and is positioned above a horizontal line.

April Canik, Communications Director
St. Luke's United Methodist Church
Houston, TX